

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Charles Edward Bundrick, Jr.,

Debtor(s).

C/A No. 23-01440-EG

Chapter 13

**ORDER**

**THIS MATTER** came before the Court for a hearing on September 6, 2023, to consider the Motion to Reconsider Dismissal of Case (“Motion”) filed by Charles Edward Bundrick, Jr. (“Debtor”), *pro se*,<sup>1</sup> on August 9, 2023,<sup>2</sup> and the Response thereto filed by his counsel, Benjamin R. Matthews (“Counsel”).<sup>3</sup> The hearing was attended by Counsel and Chapter 13 Trustee Pamela Simmons-Beasley (the “Trustee”) in person and by Debtor via phone.<sup>4</sup> The Court enters the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

On May 18, 2023 (the “Petition Date”), Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of Counsel. Although no retainer agreement and no Disclosure of Compensation of Attorney for Debtor(s) (Form B2030) (“Disclosure of Compensation”) were filed with the petition, Debtor and Counsel agree that Debtor paid Counsel \$1,063.00, representing \$750.00 in compensation plus \$313.00 for the filing fee. On June 1, 2023—the date that schedules and statements of financial affairs were due—Counsel sought an extension of time to file the required documents, stating that Debtor had “encountered unexpected difficulty in gathering the necessary information to complete the schedules and other documents

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<sup>1</sup> Benjamin R. Matthews is still counsel of record for Debtor, but Debtor filed the Motion himself.

<sup>2</sup> ECF No. 13.

<sup>3</sup> ECF No. 16, filed Aug. 9, 2023.

<sup>4</sup> At approximately 5:00 p.m. the day before the hearing, Debtor filed a request for continuance (ECF No. 20). Consistent with the Court’s practice and procedures, the Court denied that request but allowed Debtor to appear by phone as an accommodation (ECF No. 21).

necessary for [his] case.”<sup>5</sup> The Court extended the deadline to file the schedules, statements, and plan until June 15, 2023.<sup>6</sup> On June 26, 2023, a meeting of creditors was held pursuant to 11 U.S.C. § 341, during which Debtor acknowledged he needed to file the required documents and indicated he would work with Counsel to complete them. On July 18, 2023—two months after the case was filed and with no documents or plan on file—the Trustee sought dismissal of the case pursuant to 11 U.S.C. § 521(i).<sup>7</sup> On July 19, 2023, the Court confirmed the dismissal of the case as of July 3, 2023—the 46<sup>th</sup> day after the Petition Date—pursuant to § 521(i).<sup>8</sup>

On August 9, 2023—21 days after the case was dismissed—Debtor filed the Motion. He asserts that on May 25, 2023—a week after the Petition Date—the Family Court for Lexington County, South Carolina (the “Family Court”) demanded that Debtor pay \$5,150.00 toward a \$30,000.00 arrearage in child support, an arrearage amount Debtor contests. According to the Motion, the Family Court called Counsel’s office and explained to a paralegal that there was an outstanding warrant that would result in Debtor’s arrest if he did not make the payment. Debtor claims that Counsel then left a voicemail for Debtor indicating that he did not need to pay the \$5,150.00 requested by the Family Court. Debtor asserts that Counsel failed to take any action in this Court concerning what he perceives as a violation of the automatic stay and further argues that the Family Court issues somehow prevented the filing of his schedules, statements, and a plan. He further argues that he proceeded to pay the \$5,150.00 to avoid his arrest. The Motion further claims that Counsel refused to refund the \$1,063.00 that Debtor paid to Counsel upon request, even though the only legal services that Debtor claims Counsel provided in the case were to file the petition and the motion seeking an extension of time to file documents.

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<sup>5</sup> ECF No. 7.

<sup>6</sup> ECF No. 8, entered June 2, 2023.

<sup>7</sup> ECF No. 10.

<sup>8</sup> ECF No. 11.

On August 9, 2023, Counsel filed a Response to the Motion in which he asserts that he and his office requested the information and documentation necessary to complete the schedules, statements, and plan on multiple occasions, but the only documentation that Debtor provided was a copy of his 2022 tax returns. The Response attached certain emails between Debtor and Counsel or his staff. The emails show Counsel and his staff requested Debtor on multiple occasions to provide the information and documents necessary to complete the required schedules and statements of financial affairs to be filed with the Court. The emails also reflect that when Debtor inquired about what was going to be done regarding the Family Court issues, Counsel and his office advised him that they needed to complete Debtor's schedules, statements, and plan before that matter could be addressed. On June 13, 2023, Counsel responded to an email from Debtor raising concerns about the ongoing issues in the Family Court by stating:

The Bankruptcy Court can dismiss your case if we don't file the remaining paperwork they need. Please get the documents we have requested to my office as soon as you possibly can. We'll help you contact the IRS representative to sort that out. We have notified Lexington County multiple times but you said they need more from the bankruptcy to show that the amounts due to their office will be paid. I cannot send that to them until we have information from you that we have requested. When can I expect to get these documents so that I can better help you with this situation?

A review of the communications filed with the Response indicates a total of nine (9) additional requests after the June 13 email from Counsel or the firm's paralegal for Debtor to provide the information necessary to prepare the required documents.

At the September 6, 2023 hearing, Debtor acknowledged that, other than an initial meeting, he never sat down with Counsel's office to review what information was required to complete the schedules and statements. He stated he provided what information he could on the online questionnaire but conceded that the only documents he provided Counsel were his 2022 tax

returns. At the hearing, Debtor appeared to seek relief against the Family Court, though he did not specify the form of relief, and asserted he should be refunded the retainer he paid to Counsel.

At the hearing, Counsel argued that Debtor proceeded with paying the \$5,150.00 before Counsel had a chance to take any action and further reiterated that Debtor never provided his office with the information necessary to complete the required documents. The Court inquired of Counsel why the required Disclosure of Compensation had not been filed with the petition. Counsel stated he “didn’t think it was necessary because we expected to file the rest of the schedules.” To date, no Disclosure of Compensation has been filed. After the hearing, Debtor filed correspondence that reiterates the allegations made in the Motion.<sup>9</sup>

### **CONCLUSIONS OF LAW**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and the Court may enter a final order. The Court is presented with two issues: (1) whether to grant relief from the Order entered July 19, 2023 dismissing this case pursuant to 11 U.S.C. § 521(i); and (2) whether to grant Debtor’s requests for relief against Counsel and/or the Family Court, as Debtor’s arguments in Court and Motion appear to suggest. For the reasons stated below, the Court will deny all relief requested by Debtor, but will order Counsel to return \$500.00 to Debtor.

#### **I. RECONSIDERATION OF DISMISSAL**

The Motion does not state the authority under which reconsideration is sought. The Motion cannot be construed as a motion to alter or amend a judgment, as Fed. R. Bankr. P. 9023 requires

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<sup>9</sup> ECF Nos. 23 and 25, filed on Sept. 7, 2023 and Sept. 13, 2023, respectively. The correspondence was filed after the conclusion of the hearing and after the matter was taken under advisement. At the hearing, the Court heard arguments from both sides and reviewed all the pleadings on file. The Court will not entertain any further evidence now that the record is closed. The Court, however, has reviewed the correspondence, but it does not alter the conclusions made herein.

such motions be brought no later than 14 days after entry of judgment, and the Motion was filed 21 days after the order dismissing the case. Fed. R. Civ. P. 60(b)<sup>10</sup> provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Section 521(i)(1) provides that “if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, **the case shall be automatically dismissed** effective on the 46th day after the date of the filing of the petition.” 11 U.S.C. § 521(i)(1) (emphasis added). Moreover, section 521(i)(2) provides that “with respect to a case described in [§ 521(i)(1)], any party in interest may request the court to enter an order dismissing the case. If requested, **the court shall enter an order of dismissal** not later than 7 days after such request.” 11 U.S.C. § 521(i)(2) (emphasis added). “Section 521(i) is a component of a strict statutory regimen. . . That statutory regimen does not include reinstatement of a case that has been dismissed pursuant to section 521(i). Such a dismissal is statutory in nature and is not subject to being vacated or avoided based upon a party’s mistake, inadvertence or excusable neglect.” *In re Wallace*, No. 10–81205C–13D, 2010 WL 3584981, at \*1 (Bankr. M.D.N.C. Sept. 14, 2010) (citing cases); *see also In re Bosley*,

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<sup>10</sup> This rule is made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024.

C/A No. 22-02870-EG, ECF No. 49 (Bankr. D.S.C. Dec. 15, 2022) (denying motion to reconsider dismissal pursuant to section 521(i)).

With some limited exceptions, which are not present here, section 521 does not provide the Court discretion as to whether to dismiss a case if the debtor fails to file the documents required by section 521(a)(1) within 45 days of filing the petition, nor does it provide the Court discretion to reconsider its dismissal of the case pursuant to section 521(i). Even if the Court had discretion to reconsider dismissal of the case pursuant to section 521(i), Debtor has not presented any grounds under Fed. R. Civ. P. 60(b) that would justify reinstating the case. Debtor did not explain why he failed to provide Counsel with the information required to complete schedules and statements. The record before the Court indicates Debtor simply neglected to timely provide all the requested information despite numerous requests from Counsel and his office. Accordingly, the Court will not reinstate this case.

## **II. RELIEF REQUESTED AGAINST FAMILY COURT & COUNSEL**

Aside from Debtor's vague allegations of actions taken post-petition in the Family Court dispute that were in possible violation of the automatic stay, the record is devoid of any concrete evidence to support Debtor's arguments. No orders the Family Court may have issued nor any documents pertaining to actions it may have taken post-petition affecting Debtor were submitted into evidence. While Debtor's pleadings and arguments in Court appeared to suggest that he was seeking relief against the Family Court itself or parties that took actions therein, it is not clear what relief Debtor suggests would be proper in this case; accordingly, any relief that Debtor may be seeking against the Family Court is hereby denied. Given the inadequacy of evidence regarding the events that may have taken place in the Family Court, the Court is also unable to conclude that Counsel failed to fulfill his duties to the Debtor by failing to report that the Family Court violated

the automatic stay, and will neither sanction Counsel nor reduce his fees pursuant to 11 U.S.C. § 329 on that basis.

The Court takes issue, however, with Counsel's failure to file a Disclosure of Compensation. Section 329 of the Bankruptcy Code provides:

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a). The Disclosure of Compensation must be filed within 14 days of the petition date. Fed. R. Bankr. P. 2016(b). Further, an attorney for a Chapter 13 debtor must file the Disclosure of Compensation and a copy of the retainer agreement if he seeks to be compensated pursuant to this Court's expedited fee approval procedure. *See* SC LBR 2016-1(b)(1). Section 329 further provides that "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—(1) the estate, if the property transferred—(A) would have been property of the estate; or (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or (2) the entity that made such payment." 11 U.S.C. § 329(b). "Attorneys representing debtors in bankruptcy cases have an affirmative duty to disclose all fee arrangements and all payments fully and completely." *In re Green*, C/A No. 20-03190-HB, 2021 WL 5177427, at \*11 (Bankr. D.S.C. Nov. 3, 2021) (citing § 329(a); Fed. R. Bankr. P. 2016(b)). "An attorney's duty to make an accurate disclosure of fees is as significant as debtors' duty to disclose their assets and liabilities. Such disclosures are important in that they enable the Court, trustees, and other parties to review the reasonableness of fees and debtors' transactions with their attorneys." *In re*

*Welch*, 647 B.R. 518, 526 (Bankr. D.S.C. 2022) (quoting *In re Walker*, C/A No. 01-11884-W, slip op. at 7 (Bankr. D.S.C. Feb. 27, 2002)). “A fee agreement may be cancelled, and compensation denied under § 329(b), if an attorney fails to comply with disclosure obligations under § 329(a) and Fed. R. Bankr. P. 2016(b).” *Green*, 2021 WL 5177427, at \*11 (citing *In re TJN, Inc.*, 194 B.R. 400 (Bankr. D.S.C. 1996); *Turner v. Davis, Gellenwater & Lynch (In re Inv. Bankers, Inc.)*, 4 F.3d 1556, 1565 (10th Cir. 1993)).

The Court has become aware of several recent cases in which Counsel has failed to file a Disclosure of Compensation with the Court, and Counsel did not file one even after the Court brought the deficiency to Counsel’s attention at the hearing. Without the benefit of the Disclosure of Compensation or the retainer agreement, the Court cannot make a complete review of the reasonableness of the fees.<sup>11</sup> The Court believes denying Counsel a portion of his fee will incentivize him to make filing Disclosures of Compensation a regular practice of his firm, as the Bankruptcy Code and Bankruptcy Rules require. Therefore, as a sanction for Counsel’s failure to comply with disclosure obligations under 11 U.S.C. § 329(a), Fed. R. Bankr. P. 2016(b), and Local Rules of this Court, the Court will deny \$500.00 in compensation to Counsel, and require such amount be returned to the Debtor.

**IT IS, THEREFORE, ORDERED:**

- 1) The Motion to Reconsider Dismissal of Case filed by Debtor Charles Edward Bundrick, Jr. is denied;
- 2) All other requests for relief made by Debtor Charles Edward Bundrick, Jr., whether in pleadings or in arguments at the hearing, are denied;

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<sup>11</sup> As to the remaining \$563.00, the Court notes that \$313.00 was for the filing fee paid to the Court and concludes the remaining \$250.00 is reasonable given the time that Counsel evidently spent preparing and filing documents with the Court as well as attempting to obtain information and documentation from the Debtor.

3) Pursuant to the requirements of 11 U.S.C. § 329(b) and as a sanction for Counsel's failure to comply with disclosure obligations under 11 U.S.C. § 329(a), Fed. R. Bankr. P. 2016(b), and Local Rules of this Court, the Court denies \$500.00 in compensation to Benjamin R. Matthews for services in connection with this case, and orders Matthews to return \$500.00 to Debtor Charles Edward Bundrick, Jr.; and


4) Benjamin R. Matthews shall file an affidavit attesting to compliance with paragraph 3 within ten (10) days of the entry of this Order.

**AND IT IS SO ORDERED.**

**FILED BY THE COURT  
09/13/2023**



Entered: 09/13/2023

  
Elisabetta G. M. Gasparini  
US Bankruptcy Judge  
District of South Carolina